

25



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,817	09/26/2001	Gary Gomringer	70800.01	1182
26161	7590	11/17/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			BUI, VY Q	
			ART UNIT	PAPER NUMBER
			3731	
DATE MAILED: 11/17/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

05

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/963,817		GOMRINGER ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Vy Q. Bui		3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on RCE (8/30/2004).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-47 is/are pending in the application.
- 4a) Of the above claim(s) 30-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-29 and 40-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>p. 1, IDS 8/30/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-29, 43-47 are rejected under 35 U.S.C. 103(a) as obvious over DOR et al. (6,334,871).

As to claims 27-29, 43-47, DOR (Figs. 1-7; claim 1) discloses stent 1 defining struts with holes 2 to receive radiopaque rivets 3/8/9/12 of gold/tantalum/platinum having heads 13 or cone heads shown in Fig. 4 having larger diameter than the diameter of the rivets' shaft. Inherently, the shaft of rivet 8, see Fig. 4 for example, has a diameter smaller than hole 2 so that rivet 8 can be inserted into hole 2 before compressing the rivet 8 to create cone heads containing in beveled edges 7. Alternatively, rivet 8 for example, can be made to have a smaller shaft diameter for inserting into hole 2 before compressing rivet 8 to create cone heads containing in beveled edges 17 as this process is conventional and well-known in the art. DOR does not disclose the length of the shaft of the rivet. However, it would have been quite within level of one of ordinary skill in the art to size the rivet as recited in the claims so as the rivet can fit to the DOR stent.

Claims 22-26, 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over DOR et al. (6,334,871) in view of BREER (3,869,956).

Art Unit: 3731

DOR (Figs. 1-7; claim 1) discloses stent 1 defining struts with holes 2 to receive radiopaque rivets 3/8/9/12 of gold/tantalum/platinum having heads 13 or cone heads shown in Fig. 4 having larger diameter than the diameter of the rivets' shaft. DOR does not disclose a washer in combination with a rivet. However, rivet and washer combination is conventional and well-known fastener combination. For example, BREER (Figs. 1a-1b; col. 1, lines 59-64) discloses rivet 20 and washer 21 for relief of a radial expansion of rivet 20 at the washer end. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a washer to a DOR rivet 3/8/9/12 to allow a relief of the radial expansion of DOR rivet at the washer end of DOR rivet. Further, it would have been quite within level of one of ordinary skill in the art to size the rivet as recited in the claims so as the rivet can fit to the DOR stent.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are not persuasive. A combination of screw/bolt/rivet and washer is well known. Many hand books in mechanical art would provide more information about the combination. It would be obvious to substitute DOR rivet to a conventional combination of rivet and washer as recited in the claims. The references, such as BREER or SCHWARZ are referred to only as an example of the wide use of a combination of a rivet and a washer.


Art Unit: 3731

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 703-308-2158. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

---

  
11/15/2004

Vy Q. Bui  
Primary Examiner  
Art Unit 3731